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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No: 2688 of 2006

PETITIONER : Rajendra Chandrakar.

VERSUS

RESPONDENTS : State of Chhattisgarh & Others.

Post for order on 23rd April, 2007

**Sd/-**
**Satish K. Agnihotri**
**Judge**

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# HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE JUSTICE SHRI SATISH K. AGNIHOTRI

WRIT PETITION No. 2688 of 2006

PETITIONER : Rajendra Chandrakar, Aged about 34 years, S/o. Manoharlal Chandrakar, President, Chhattisgarh Fishery Cooperative Society, Telibandha, Tah & District Mahasamund (CG)

VERSUS

RESPONDENTS : 1] State of Chhattisgarh Through: Collector, Mahasamund, District Mahasamund.

2] President Jai Mama Bhancha Cooperative Society, Village Kurrubhata, Tahsil and District Mahasamund (CG)

3] Lakhanlal, Vice-President, Jai Mama Bhancha Cooperative Society, Village Kurrubhata, Tahsil and District Mahasamund (CG)

4] Chief Executive Officer, Janpad Panchayat, Mahasamund, Tahsil and District Mahasamund (CG)

5] Director of Panchayat, Chhattisgarh, D.K.S. Bhawan, Raipur (CG)

6] Janpad Panchayat, Mahasamund, Vikashkhand & Distt. Mahasamund (CG)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

Present: Shri Manoj Paranjpe, Advocate for the petitioner.

Shri Sushil Dubey, Govt. Advocate for the respondent no.1 & 5.

Shri. J.A.Lohani, Advocate for respondent no. 2 and 3.

Shri Pankaj Shrivastava, Advocate for respondent no. 4 and 6.

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**ORDER**

(Passed on 23rd day of April, 2007)

1. By this petition, the petitioner, President, Chhattisgarh Fishery Cooperative Society, Telibandha, District Mahasamund, questions the legality and validity of the order dated 05.09.2005 (Annexure P/3) passed by the Chief Executive Officer, leased out the right of fishing of the disputed irrigation pond to respondent no. 2 and 3 Society for a period of 5 years, the order dated 13.12.2005 (Annexure P/8) passed by the Collector, Mahasamund, confirming the order dated 05.09.2005, as being valid and proper and order dated 12.04.2006 (Annexure P/11) passed by the Director, Panchayat, whereunder the revision filed by the petitioner was dismissed holding that 58.89 hectare of submerged area of Telibandha Irrigation Pond is in village Kurrubhata and 7.59 hectare submerged area is in Telibandha. Both the areas come within the periphery of 8 K.M. Thus, the grant of lease for fishing right to the respondent no. 2 and 3 society was just and proper.

2. The indisputable facts, in nutshell, are that the petitioner and respondent no. 2 and 3 societies are registered co-operative societies engaged in the business of pisciculture. On 20.07.2005, applications were invited on floating tenders by Janpad Panchayat, Mahasamund, for leasing out the fishing rights to the Registered cooperative society, which operates within the periphery of 8 K.M. The petitioner society and the respondent no. 2 and 3, Jai Mama Bhancha Cooperative Society, Kurrubhata, applied for the same. Having considered all the aspects, the lease of fishing rights of the pond was awarded to the respondent society, Jai Mama Bhancha Cooperative Society, Kurrubhata, (hereinafter referred to as 'respondent society') vide order dated 5.9.2005, pursuant to the resolution dated 20.7.2005 (Annexure P/1) .

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3. Being aggrieved and dissatisfied, the petitioner society preferred an appeal before the Collector in Revenue Case No. 16/A-98/2004-05 challenging the order passed by the Chief Executive Officer, Mahasamund, on the ground that the petitioner society is situated in village Telibandha and 24 out of 25 members are the resident of village Telibandha. Thus, as per policy of the government, the petitioner society is entitled to be allotted fishing rights of the said pond. The petitioner society's registration is earlier in point of time and the petitioner society should be given preference as per the government policy.

4. The Collector, vide order dated 13.12.200 (Annexure P/8), after hearing both the parties, came to the conclusion that 58.89 hectare of the submerged area is in village Kurrubhata and 7.59 hectare is in village Telibandha. Thus, as per policy, the society operating in village Kurrubhata, i.e. the respondent society, has preferential right over the allotment of fishing right of the Telibandha and the area of both the society are within the periphery of 8 K.M. Thus, the appeal filed by the petitioner society was rejected and the order passed by the Chief Executive Officer, Mahasamund was upheld.

5. Being aggrieved and dissatisfied with the order passed by the Collector, the petitioner society preferred a revision case no. 11/A-89/2005-06 before the Director, Panchayat, Government of Chhattisgarh, Raipur. The Director, Panchayat, after having heard both the parties and perusing documents, confirmed the findings recorded by the Collector and rejected the revision vide order dated 12.04.2006 (Annexure P/1). Thus, this petition.

6. Shri Manoj Paranjpe, learned counsel appearing for the petitioner would submit the same ground before this Court as raised before the Collector. Per contra, learned counsel appearing for the respondent society and respondent no. 5 and 6 would support the orders passed by the authorities below.

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7. I have heard the learned counsel for the parties, perused the pleadings and the records appended thereto.

8. The relevant clause i.e. 1.1, 2.1, 2.4, 3.3, 4.2, 10.1, 10.2 and 16.2 of the Fishing Policy of the State of Chhattisgarh reads as under:

1.1 मत्स्य पालन हेतु पट्टे पर देने के अधिकार के तहत पंचायतें तालाबों/ जलाशयों को शासन द्वारा निर्धारित नियमों, शर्तों एवं प्राथमिकता के अनुसार ही पट्टे पर देगी (परिशिष्ट–1) किसी भी स्तर की पंचायत को शासन द्वारा निर्धारित नियमों से हटकर किसी भी जलाशय को पट्टे पर देने का अधिकार नहीं होगा।

2.1 शासन की स्पष्ट नीति है कि तालाब/जलाशय का पट्टा आबंटन करने हेतु निर्धारित प्राथमिकता कमानुसार ही इन तालाब/जलाशयों को गरीबी रेखा से नीचे जीवनयापन करने वाले स्थानीय मछुओं को प्राथमिकता के आधार पर मत्स्य पालन हेतु पंचायतें पट्टे पर आबंटित कर किसी भी स्थिति में इन जलक्षेत्रों की नीलामी न करें।

2.4 तालाब/जलाशय की 8 कि.मी. की परिधि में आने वाली स्थानीय पंजीकृत मछुआ सहकारी समितियों को प्राथमिकता रहेगी यदि एक ही क्षेत्र में एक से अधिक स्थानीय पंजीकृत मछुआ सहकारी समितियॉं है निर्धारित समयावधि में आवेदन देने की स्थिति में सबसे पुरानी पंजीकृत मछुआ सहकारी समिति को प्राथमिकता होगी।

3.3 एक ही तालाब/जलाशय के पट्टे पर आबंटन हेतु एक से अधिक आवेदन निर्धारित समयावधि में में प्राप्त होने की दशा में प्राप्त आवेदक मछुआ समितियों, जो सबसे पुरानी समिति है पट्टा आबंटन किया जा सकेगा, किन्तु यह जलक्षेत्र समिति के कार्यक्षेत्र में हो।

4.2 नवीन सहकारी समितियों के गठन के समय यह सुनिश्चित किया जावे कि केवल वे ही व्यक्ति समिति के सदस्य बनें जो वास्तव में मछुआरे की परिभाषा में आते हों और पानी में उतरकर मछली पकडते हो साथ ही छत्तीसगढ का मूल निवासी हो। सहकारी समितियों के लिए गरीबी रेखा को आधार नहीं माना जावे।

10.1 मछुआ सहकारी समिति का कार्यक्षेत्र समिति के मुख्यालय से 8 कि.मी. की परिधि का होगा। तालाब/जलाशय के 8 किलो मीटर की परिधि में रहने वाले मछुआरे मछुआ समिति की सदस्यता के पात्र होंगे।

10.2 मत्स्य पालन के लिए स्थानीय पंजीकृत मछुआ सहकारी समिति को उनके कार्यक्षेत्र के ही तालाब/जलाशय का आबंटन प्राथमिकता के आधार पर किया जावे। प्रति मछुआ जलक्षेत्र का निर्धारण उनकी आर्थिक बायेविलिटी को ध्यान रखते किया जावे ताकि मछुओं को न्यूनतम इतना जलक्षेत्र उपलब्ध हो सके कि वह मत्स्य पालन अपनाकर अपनी आजीविका का निर्वाह कर सके।

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16.2 सभी स्तर की पंचायतें तालाब/जलाशय 5 वर्षीय पट्टे पर मत्स्य पालन के लिए आबंटन हेतु पंचायत अधिनियम में उल्लेखित प्रावधान अन्तर्गत विहित प्राधिकृत अधिकारी (कलेक्टर) से अनुमति प्राप्त कर पट्टे पर आबंटन करेगी। किसी भी स्थिति में तालाब/जलाशय की नीलामी पंचायतों द्वारा नहीं की जावेगी।

9. On careful reading of the above stated clauses and perusing the policy, it is established that the preference has to be given to the society which is operating within the periphery of 8 K.M. In case, one or more societies are working, the oldest society should be given preference having more Scheduled Caste and Scheduled Tribes as members of the society. It is further made clear that the members living below the poverty line should not be the criteria for grant of lease for fishing rights. The contention of the petitioner is that the bundh portion of the pond is situated in Telibandha village and it is known as Telibandha Irrigation pond, therefore, the preference should be given to the society which is operative in Telibandha area. In the present case, it is admitted that the bundh is situated in Telibandha village but more than 80% of the water pondage area is in Kurrubhata. Thus, granting of fishing rights to respondent society is more viable and both the societies are operative within the periphery of 8 K.M.

10. With regard to the registration of the society at an earlier point of time, it is true that the difference of few months is there but looking into overall requirement and the magnitude of submergence of Kurrubhata village, it is just and proper to grant fishing rights to the respondent society. The guidelines and the policy have to be understood keeping in view the intention and it should not be followed so as to defeat its objective which was sought to be achieved by the policy.

11. Having regard to the facts of the case, I am of the considered opinion that the grant of lease of fishing right to the respondent society is legal and proper. The findings regarded by the authorities below is unexceptionable.

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12. The question of second revision is not necessary to be examined in the present case.

13. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

14. Applying the above settled principles of law to the facts of the present case, it does not warrant an interference with the impugned orders passed by the authorities below.

15. Thus, this petition is dismissed. No order as to costs.

**Sd/-**
**Satish K. Agnihotri**
**Judge**

Amit